

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL EUZEL JACQUES,
Plaintiff,
v.
M. SIMPSON, et al.,
Defendants.

No. 2:21-cv-2143-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint, he has filed an application for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Application to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

24 Screening Order

25 Plaintiff alleges that on August 16, 2020, he participated in an interview with correctional
26 officer Arther concerning a claim of excessive force against correctional officer Simpson. ECF
27 No. 1 at 9-10. Later that day, Arther arrived at plaintiff’s cell with officers Simpson and Jones.
28 *Id.* at 10. They had his cell door electronically opened, then Simpson stated, “You snitched on

1 me . . . this blue lives matter, fuck black lives matter.” *Id.* Simpson then punched plaintiff in the
2 mouth two times. *Id.* at 10-11. The cell door closed and Jones said, “We’ll fuck your ass up right
3 now.” *Id.* at 11. Arther said “Don’t snitch on cops.” *Id.* Plaintiff had a gash and immediate
4 swelling of his upper lip. *Id.* The defendant officers denied plaintiff’s request for medical care,
5 telling plaintiff, he “wasn’t getting shit.” *Id.* Liberally construed, these allegations are sufficient
6 to state potentially cognizable First Amendment retaliation and Eighth Amendment excessive
7 force and deliberate indifference to medical needs claims against defendants Simpson, Arther,
8 and Jones.

9 Plaintiff also claims that defendant Warden Lynch was on notice of staff’s abusive
10 conduct but failed to take disciplinary action or otherwise control their behavior. *Id.* at 12. This
11 claim is too vague and conclusory to survive screening as it does not show how Lynch personally
12 participated in a violation of plaintiff’s rights. Lynch appears to be named as a defendant simply
13 because of his role as a supervisor, which is not a proper basis for liability. *See Taylor v. List*,
14 880 F.2d 1040, 1045 (9th Cir. 1989).

15 Plaintiff also asserts several claim based on state tort law. The California Torts Claims
16 Act (“Act”) requires that a party seeking to recover money damages from a public entity or its
17 employees submit a claim to the entity *before* filing suit in court, generally no later than six
18 months after the cause of action accrues. Cal. Gov’t Code §§ 905, 911.2, 945, 950.2 (emphasis
19 added). When a plaintiff asserts a claim subject to the Act, he must affirmatively allege
20 compliance with the claim presentation procedure, or circumstances excusing such compliance, in
21 his complaint. *Shirk v. Vista Unified Sch. Dist.*, 42 Cal. 4th 201, 209 (2007). Plaintiff’s
22 complaint is devoid of such allegations.

23 For these reasons, plaintiff may either proceed only on the potentially cognizable First and
24 Eighth Amendment claims against defendants Simpson, Arther, and Jones or he may amend his
25 complaint to attempt to cure the complaint’s deficiencies. Plaintiff is not obligated to amend his
26 complaint.

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Leave to Amend

Plaintiff may file an amended complaint to attempt to cure the deficiencies noted above. Any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). Plaintiff is not obligated to file an amended complaint.

Plaintiff may not change the nature of this suit by alleging new, unrelated claims in the amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

The court cautions plaintiff that failure to comply with the Federal Rules of Civil Procedure, this court's Local Rules, or any court order may result in this action being dismissed. *See* Local Rule 110.

Conclusion

Accordingly, it is ORDERED that:

1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is GRANTED.
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith.
3. Plaintiff's complaint alleges, for screening purposes, potentially cognizable First Amendment retaliation and Eighth Amendment excessive force and deliberate indifference to medical needs claims against defendants Simpson, Arther, and Jones.

1 4. All other claims (including those against defendant Lynch) are dismissed with leave to
2 amend within 30 days of service of this order. Plaintiff is not obligated to amend his
3 complaint.

4 5. Within thirty days plaintiff shall return the notice below advising the court whether he
5 elects to proceed with the cognizable claim or file an amended complaint. If the
6 former option is selected and returned, the court will enter an order directing service at
7 that time;

8 6. Failure to comply with any part of this this order may result in dismissal of this action.

9 Dated: January 19, 2022.

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11 EDMUND F. BRENNAN

12 UNITED STATES MAGISTRATE JUDGE
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NOTICE

In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) _____ proceed only with the First and Eighth Amendment claims against
defendants Simpson, Arther, and Jones;

OR

(2) _____ delay serving any defendant and file an amended complaint.

Plaintiff

Dated: